IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.7699 OF 2004

Shri Rafik Rajjak Shaikh Petitioner

Vs.

Deputy Engineer, Empolyment Guarantee Scheme & anr. Respondents

Mr.Dilip Bodake for petitioner.

Mr.D.A.Patil, AGP for respondents.

CORAM: B.H.MARLAPALLE,J.

June 10, 2005.

ORAL ORDER:

1. Heard Mr.Bodake, the learned counsel for the petitioner and Mr.D.A.Patil, the learned AGP for the respondents. The petitioner had approached the Labour Court at Satara by filing Complaint (ULP) No.6 of 1987 and the same was allowed partly by the judgment and order dated 2-2-1995. The Respondent-Department was directed to reinstate the complainant with continuity of service but without backwages. The said order was carried in revision before the Industrial Court and Revision Application (ULP) No.24 of 1995 along with other connected revisions came to be allowed by the common judgment and order dated 5-4-2004 by the Industrial Court at Satara. The said order of the Industrial Court is challenged in this petition.

2. The petitioner claimed to have joined as Muster Assistant on or about 2-2-1982 and he continued as such till 30-9-1984. He approached the Labour Court at Satara and filed complaint 24-8-1987 and contended that he was illegally removed from service with effect from 1-101-1984. The Labour Court condoned the delay and had noted that the

complainant had completed 240 days service in each calendar year before he was discharged. The Labour Court noted that the mandatory requirements of 25F of the Industrial Disputes Act, 1947 were not complied with and, therefore, the petitioner was illegally terminated from service. Resultantly the Department was held to have engaged in an act of unfair labour practice within the meaning of Item 1 of Schedule IV of the MRTU & PULP Act, 1971. The Industrial Court noted that the complainant was working as a muster assistant under the Employment Guarantee Scheme framed under the Maharashtra Employment Guarantee Act. The Industrial Court further referred to a decision of this Court in the case of Zilla Parishad, Ahmednagar vs. Namdeo Pawar (Writ Petition No.703 of 1997 decided on 15/12/1999) and more particularly the findings of this Court that the muster assistants employed under the Employment Guarantee Scheme cannot be regarded as "workmen" within the meaning of Section 2(s) of the I.D. Act. The Industrial Court set aside the decision of the Labour Court and dismissed the complaint.

3. Mr.Bodake, the learned counsel for the petitioner relied upon yet another decision of this Court in the case of Executive Engineer, Yavatmal v. Anant Yadao Murate reported in **1998(3) Mh.L.J. 897** and submitted that there was no occasion for the Industrial Court to interfere with the view taken by the Labour Court. He also submitted that the respondent-Department is an "Industry" within the meaning of Section 2(j) of the I.D. Act and casual workmen engaged by the said Department on daily wages must fall within the purview of Section 2(s) of the I.D. Act He

further submitted that once the Labour Court had recorded a finding regarding non-compliance of mandatory provisions of Section 25F of the I.D. Act, the Industrial Court could not have interfered with the said finding unless the Industrial Court was of the view that the findings were grossly erroneous.

4. In the case of Ananat Yadav Murate (Supra) the employment was not under the Employment Guarantee Scheme and he was engaged on daily wages in a project. On completion of the project his services were dispensed with by preparing a seniority list. He was not engaged under the Employment Guarantee Scheme and, therefore, the same ratio is not applicable in the instant case. The learned Member of the Industrial Court rightly relied upon the decision of this Court in the case of Zilla Parishad, Ahmednagar (Supra) and held that the casual wagers employed as Muster Assistants under the Employment Guarantee Scheme could not be held to be workmen within the meaning of Section 2(s) of the I.D. Act.

5. As far as compliance of Section 25F of the I.D. Act is concerned the Supreme Court in the case of Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi reported in **AIR 1992 SC 789** held that the daily wagers engaged on casual basis under the various schemes like Jawaharlal Nehru Rozgar Yojna etc. do not have a right to claim regularisation of service on the ground that they completed continuous service of one year nor can they seek reinstatement on the alleged ground of breach of Section 25F of the I.D. Act. The said decision

must squarely apply to the daily rated casuals appointed under the Employment Guarantee Scheme.

6. Thus on both the counts, the decision of the Labour Court was unsustainable and the Industrial Court reversed it, under its powers of revision set out in Section 44 of the MRTU & PULP Act, 1971. The view taken by the Industrial Court cannot be termed as erroneous by any stretch of imagination and, therefore, the challenge to the same raised in this petition must fail. The petition is hereby rejected summarily.

(B.H.MARLAPALLE,J.)